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The Massachusetts decision, which was made the year previous to the case in Maine, was cited before the Maine court, but it was thought that the construction given to the statute in Massachusetts went on the ground of the purpose of the Massachusetts statute being penal. The criticism of the Massachusetts case of *Kearney v. Boston & Worcester R. R. Co.*, just quoted, is obviously the result of identifying an act, which merely provides for the survival of the right of action for injuries to the person, with acts like Lord Campbell's Act, and proceeds upon the theory that the latter act merely continues a right of action vested in the decedent, and does not create a new right of action. That is Judge Cooley's theory of the statute. (Cooley on Torts, p. 264.) It is quite evident, however, both from the condition of the statute law and the decisions cited, that the Massachusetts court (and this is true even in a greater degree of the Maine court), does not recognize any such identity.

CHARLES R. DARLING.

Madison, Wis.

(To be continued.)

STATUTES RELATING TO TELEPHONES.

(Continued.)

Pennsylvania has provided for the incorporation and regulation of telephone companies, in general terms, by a supplement to the General Corporation Act of 1874, approved May 1, 1876 (P. L. 90)—

SEC. 1. *Be it enacted, etc.*, That corporations of the second class may be formed and created in the manner provided for by the act to which this is a supplement, and with all the rights and powers therein granted, for the purpose of constructing, maintaining, and leasing lines of telegraph for the private use of individuals, firms, corporations, municipal and otherwise, for general business, and for police, fire alarm or messenger business, or for the transaction of any business in which electricity, over or through wires, may be applied to any useful purpose.

SEC. 2. The business of such corporation may be wholly within, or partly within and partly without the limits of any city, borough, or township in this State, or partly in any other State or States.

SEC. 3. That in lieu of the requirements of the first paragraph of the thirty-third section of the act to which this is supplementary, approved April twenty-ninth, one thousand eight hundred and seventy-four, the charter for the incorporation of companies under the provisions of this act shall state: *First*, In what counties in this State it is proposed to carry on business; *Second*, In what other States it is proposed to carry on business.

The fourth section of this supplementary act was amended by Act approved June 25, 1885 (P. L. 164), so as to read—

SEC. 4. That before the exercise of any of the powers given under this act, application shall first be made to the municipal authorities of the city, town, or borough, in which it is proposed to exercise said powers, for permission to erect poles, or run wires on the same or over, or under any of the streets, lanes, or alleys of said city, town or borough, which permission shall be given by ordinance only, and may impose such conditions and regulations as the municipal authorities may deem necessary.

Prescriptive rights had been previously regulated, by Act approved April 19, 1883 (P. L. 13), entitled—

An Act respecting telegraph, telephone, electric light and other wires and cables for electric purposes.

SEC. 1. *Be it enacted, etc.,* That, whenever any wire or cable, used for any telegraph, telephone, electric light, or other wire, or cable for electric purposes, is, or shall be, attached to, or does, or shall, extend upon, or over, any building or land, no lapse of time whatsoever shall raise a presumption, or justify a prescription, of any perpetual right, to such attachment or extension.

“A further Supplement” to the Revenue Act of 1879, approved June 1, 1889 (P. L. —), provides—

SEC. 23. That every railroad company, pipe-line company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, street passenger railroad company, and every other company, joint stock association or limited partnership, now or hereafter incorporated, or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other State, or by the United States, or any foreign government, and doing business in this Commonwealth, and owning, operating, or leasing to or from another corporation, company, association, joint stock association, or limited partnership, any railroad, pipe-line, slack water navigation, street railway, canal, or other device for the transportation of freight, or passengers, or oil, and every telephone or telegraph company, incorporated under the laws of this, or any other State, or of the United States, and doing business in this Commonwealth, and every express company, incorporated or unincorporated, doing business in this Commonwealth, and every firm, co-partnership, or joint stock company, or association, doing business in this Commonwealth, and every electric light company, and every palace car and sleeping car company, incorporated or unincorporated, doing business in this Commonwealth, shall pay to the State Treasurer, a tax of eight mills upon the dollar upon the gross receipts of said corporation, company, or association, limited partnership, firm, or co-partnership, received from passengers and freight traffic, transported wholly within this State, and from telegraph, telephone, or express business, done wholly within this State, or from business of electric light companies, and from the transportation of oil, done wholly within the State; the said tax shall be paid semi-annually, upon the last days of January and July in each year; and, for the purpose of ascertaining the amount of the same, it shall be the

duty of the treasurer, or other proper officer of the said company, firm, co-partnership, limited partnership, joint stock association, or corporation, to transmit to the Auditor-General a statement, under oath or affirmation, of the amount of gross receipts of said companies, co partnerships, corporations, joint stock associations, or limited partnerships, derived from all sources, and of gross receipts from business done wholly within the State during the preceding six months ending on the first days of January and July in each year, and if any such company, firm, co-partnership, joint stock association, or limited partnership, or corporation, shall neglect, or refuse, for a period of thirty days after such tax becomes due, to make said returns, or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the Commonwealth, as other taxes are recoverable by law.

Provided, That, in any case, where the works of one corporation, company, joint stock association, or limited partnership, are leased to and operated by another corporation, company, association, or limited partnership, the taxes imposed by this section shall be apportioned between the said corporations, companies, associations, or limited partnerships, in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes, the Commonwealth shall first look to the corporation, company, association, or limited partnership, operating the works; and, upon payment by the said company, corporation, association, or limited partnership, of a tax upon the receipts, as herein provided, derived from the operation thereof, the corporation, company, joint stock association, or limited partnership, from which the said works are leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works.

Rhode Island, in preventing title by possession, provides (Gen. Stat. 1882, Title xxii., chap. 175, p. 447)—

SEC. 10. No enjoyment, by any persons, companies, or corporations, for any length of time, of the privilege of maintaining telegraph posts, wires, or apparatus, in, upon, or over, any lands or buildings of other persons, or corporations, shall confer a legal right to the continued enjoyment of such easement, or raise any presumption of a grant thereof.

And, amongst "offences against private property," further provides (Gen. Stat. 1882, Title xxx., chap. 242, p. 680)—

SEC. 48. No person shall place any telegraph or telephone lines or poles, or any fixtures appertaining thereto, upon any private property, without the consent of the owners thereof.

SEC. 49. No person shall labor upon the work of erecting, or repairing, any telegraph or telephone line, belonging to any telegraph or telephone company, without having conspicuously attached to his dress a medal or badge, on which shall be legibly inscribed the name of the owners thereof, by whom he is employed, and a number, by which he can be readily identified.

SEC. 50. Every person who shall violate any of the provisions of the preceding two sections, shall be fined, not exceeding twenty dollars, or be imprisoned, not exceeding three months.

Municipal authorities are also empowered to make regulations (Gen. Stat. 1882, Title vii., chap. 38, p. 115)

SEC. 20. Town Councils and City Councils, may, from time to time, make and ordain all ordinances and regulations for their respective towns, not repugnant to law, which they may deem necessary for the safety of their inhabitants, from fire, firearms, fireworks, explosion of gunpowder from the quantity of or mode or place of storing the same; to prevent persons standing on any footwalk, doorstep, or in any doorway, or riding, driving, fastening or leaving any horse or other animal or any carriage, team, or other vehicle on any such footwalk, sidewalk, doorstep or doorway within such town, to the obstruction, hinderance, delay, disturbance or annoyance of passers by or of persons residing or doing business in the vicinity thereof; to regulate the putting up and maintenance of telegraph and other wires and the appurtenances thereof; to prevent the indecent exposure of any one bathing in any of the waters within their respective towns; against breakers of the Sabbath; against habitual drunkenness; to regulate the speed of driving horses and cattle over bridges; respecting the purchase and sale of merchandise or commodities within their respective towns and cities, to protect burying grounds and the graves therein from trespassers; and, generally, all other ordinances, regulations, and by-laws, for the well ordering, managing, and directing of the prudential affairs and police of their respective towns, not repugnant to the constitution and laws of this State, or of the United States.

For service of process on non-residents, provides (Gen. Stat. 1882, Title xxvi, chap. 207, p. 571)—

SEC. 33. In all actions at law or in equity, against the owners of telegraph and telephone lines, residing out of the State, the leaving of a certified copy of the process, including the process of garnishment, by the proper officer, at any office of said owners, within the State, with some person there in charge, shall be deemed a legal and sufficient service.

State taxation is, of course, provided (Gen. Stat. 1882, Title v, chap. 27, p. 84)—

SEC. 10. Every telegraph company, and every telephone company, doing business within this State, shall, annually, on the first Monday in July, make return to the State Auditor, subscribed and sworn to by its treasurer, or agent within this State, setting forth all the gross receipts of such company, derived from its business transacted within this State, from whatever source the same may come, whether from the transmission of messages, the use of machines, or otherwise, and shall thereafter, annually, on or before the first day of August next succeeding the making of such return, pay to the general treasurer, a tax of one percentum on such gross receipts, for the use of the State, which sum shall be in lieu of all other taxes upon its lines and personal estate used exclusively in telegraphic and telephone business within this State.

South Carolina punishes injuries to poles and wires (Gen. Stat. 1882, Title i, chap. 101, page 711)—

SEC. 2524. Any person who shall wilfully, or unlawfully, injure, damage, or destroy any pole, or wire, of any telegraph, telephone, or electric light company, in this State, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine, not exceeding one hundred dollars, or imprisonment, not exceeding thirty days, or both, in the discretion of the Court or a Trial Justice.

Tennessee provides (Code of 1884, p. 317)—

1787. The charter for electric light, and electric light and power companies, shall be as follows: "State of Tennessee—Charter of Incorporation. Be it known, that (here insert the names of five or more persons above the age of twenty-one years), are hereby constituted a body politic and corporate, by the name and style (here insert the name of the corporation), for the purpose of manufacturing electric light, or for the purpose of manufacturing electric light motive power, electrotyping, etc., or for the purpose of manufacturing electricity for telephoning purposes, etc. (State fully the objects of the company, whether one or more of the above purposes.) The general powers of said corporation are (here insert the powers, as contained in sections 1704-5).

1704. The general powers of all corporations, chartered for purposes of individual profit, shall be—

1. To sue and be sued by the corporate name.
2. To have and use a common seal, which it may alter at pleasure; if no common seal, then the signing of the name of the corporation, by any duly authorized officer, shall be legal and binding.
3. To purchase and hold, or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes.
4. To establish by-laws, and make all rules and regulations not inconsistent with the laws and the constitution, deemed expedient for the management of corporate affairs.
5. To appoint such subordinate officers and agents, in addition to the president, secretary or treasurer, as the business of the corporation may require.
6. To designate the name of the office, and fix the compensation of the officers.
7. To borrow money, and issue notes or bonds, upon the faith of the corporate property, and also to execute a mortgage, or mortgages, as further security for repayment of money thus borrowed.

1705. The following provisions and restrictions are coupled with the said grant of powers:

1. A failure to elect officers at a proper time, does not dissolve the corporation, but those in office hold until the election, or appointment, and qualification of their successors.
2. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years.
3. The corporation may, by by-laws, make regulations concerning the subscription for, or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment

thereof by the subscribers for stock; the amount to be called at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him, at the time, and in the amounts thus called, a right of action shall exist in the corporation, to sue said defaulting stockholder for the same.

1788. All companies of the character designated herein, or similar ones, now incorporated in substantial compliance with this article [Art. H. of chapter 3, "Corporations for profit"], shall be, and are, hereby declared to be legal corporations; and it shall be lawful for telephone and electric light companies, now or hereafter incorporated, to consolidate into one corporation, or partially consolidate or co-operate in such manner as the respective corporations may determine, with the concurrence of the stockholders of each, in full meeting assembled; but all rights and privileges, conferred by this article, shall be subject to revocation and repeal.

Texas provides for taxation (Rev. Civ. Stat., ed. 1888, Title 95, chap. 1.) as follows—

ART. 4665. There shall be levied on, and collected from, every person, firm, company, or association of persons pursuing any of the following named occupations, an annual tax, except when herein otherwise provided, on every such occupation, or separate establishment, as follows: * * * *

For each telephone company, doing business in this State, an annual tax of fifty dollars, and for each county, in which they may do business, a county tax of ten dollars.

Also, for malicious mischief against telephone lines (O. C. 710, amended by Act February 10, 1885, page 10, by inserting the words "or telephone" after the word "telegraph," Rev. Penal Code, ed. 1888, Title 17, chap. 3, page 234)—

§ 1158—ART. 677. If any person shall intentionally break, cut or tear down misplace, or in any other manner injure any telegraph or telephone wire, post, machinery, or other necessary appurtenance to any telegraph or telephone line, or, in any way, wilfully obstruct or interfere with the transmission of messages along such telegraph or telephone line, he shall be punished by confinement in the penitentiary, not less than two, nor more than five, years, or by fine, not less than one hundred, nor more than two thousand dollars.

Vermont provides for the stringing of wires upon existing poles, by (Rev. Laws 1880, Title 27, chap. 163, page 702)—

SEC. 3645. Whenever any persons or corporations are about to erect a line of telegraph or telephone wires, in and along a highway within any town, city, or incorporated village, in and along which a line of poles has already been erected by other persons or corporations, for a similar purpose, the selectmen of such town, or principal officers of such city or village, shall have the right to permit, and may require, the persons or corporations about to erect a new line, to attach their wires to the poles already standing, as provided in the following section.

SEC. 3646. Said selectmen, or principal officers, shall ascertain, as near as may be, the cost of erecting such line of poles, and shall direct such persons or corpor-

ations as they may require to use said poles, to pay to the owners of the line already erected, a fair proportion of such expense, not to exceed one half the estimated original cost of construction; and in no case shall said poles be used until the owners of the new line shall tender to the original owners of said line of poles, the amount so directed by said officers. And if a pole or poles, used by two or more persons or corporations, shall be required to be repaired, or renewed, the expense thereof shall be borne equally by the persons or corporations using the same.

SEC. 3647. Said officers shall give written notice to the proprietors of both the old and new lines of all their requirements in the premises, and shall also lodge a copy of said notice in the town or city clerk's office, as the case may be.

SEC. 3648. The proprietors of any such line of poles so required to be used by any other person or corporation, shall not take down, or alter, the position of such poles, without obtaining permission of all parties who may have acquired a right to use said poles, or the permission of the town, city, or village officers aforesaid; and any person or corporation, injured by the violation of this section, may maintain an action on the case, founded on this Statute, to recover the amount of such injury.

SEC. 3949. The selectmen, or other officers, shall receive one dollar each, a day, for their services under sections two and three [*ante*, §§ 3646, 3647]; and the decision of a majority of them shall be final. All expenses incurred, shall be paid by the persons, or corporations, erecting such new line.

Vermont also provides against the obstruction of highways, by an act approved November 24, 1884 (Laws, p. 22)—

SEC. 1. Persons or corporations erecting telegraph or telephone wires across a highway in a town, shall either place them under ground, or at such a distance above the surface of the highway that they may not prove an obstruction to travel in the highway. If such wires, already erected across a highway in a town, are, in the opinion of the selectmen, an obstruction, the selectmen may direct the same to be placed under ground, or at a greater height.

SEC. 2. If a wire is erected in violation of the directions of the selectmen, or is not altered, when directed to be altered by the selectmen, the selectmen may remove such wire, and may recover the expense of such removal, of the persons, or corporations, owning such wire, or who, by themselves or their agent, caused the same to be erected in violation of the directions of the selectmen, by an action brought in the name of the town.

SEC. 3. This act shall take effect from its passage.

Trespass by telephone employees is punished by an act (approved November 25, 1884; Laws, p. 102), "in addition to chapter 163 of the Revised Laws," providing—

SEC. 1. Every person, or corporation, maintaining, or operating a telephonic, telegraphic, or other electrical line, who cuts down, mutilates, or injures the trees standing upon the land of another, and anyone, who, in any manner affixes, or causes to be affixed, to the property of another, any post, structure, fixture, wire, or other apparatus for telephonic, telegraphic or other electrical communication, without first having procured the right so to do, by application to and determination

of the selectmen of the town, agreeably to chapter one hundred and sixty-three (163) of the Revised Laws of Vermont, or first obtaining the consent of the owner, or lawful agent of the owner of such property, shall, on complaint of such owner, or his tenant, be punished by fine not exceeding one hundred dollars.

Service of process on companies not organized under the laws of Vermont, is provided for by an act, approved November 25, 1884 (Laws, pp. 49, 50)—

SEC. 1. No insurance, express, telegraph, or telephone company, not organized under the laws of this State, whether said company is a corporation or co-partnership, shall do business in this State, until it has filed with the Secretary of State, a written stipulation, containing a statement of the name of the corporation and the place where chartered, or if a co-partnership, the firm name and the names and residences of the co-partners, and agreeing that legal process affecting such company, served on said Secretary of State, shall have the same effect as if served personally on said corporation, or co-partners, within this State; and such stipulation shall not be revoked, or modified, so long as any cause of action against the stipulating company to any resident of this State, shall continue to exist. Service of process, according to such stipulation, shall be sufficient service on such company; and a copy of such stipulation, certified by said Secretary of State, and his certificate, that process has been served on him, shall be sufficient evidence thereof.

SEC. 2. When process against, or affecting an insurance, express, telegraph, or telephone company, is served on the Secretary of State, it shall be served by duplicate copy, and one copy shall be immediately forwarded by said Secretary of State, by mail, to the said company at its home office, or to a person whom such company designates.

SEC. 3. If any person, as agent for an insurance, express, telegraph, or telephone company, which has not complied with the requirements of section one of this act, shall solicit or receive a risk, or application for insurance, or receives money or value for such insurance by such company, or shall receive any money or value for the transportation of any package, or property, by such express company, or for the transmission of any message, or dispatch, by such telegraph company, or shall receive any money, rent, royalty, or income for such telephone company, for the use of its instruments or lines, or for the sending of any message, he shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars.

SEC. 4. If any such company does not comply with the aforesaid provisions, a writ of process against such companies may be served, by delivering a true and attested copy thereof, with the officer's return thereon, to an agent of such company residing in this State, thirty days prior to the return day thereof.

SEC. 5. Sections 3608, 3609, 3650, 3651, 3652, 3653, of the Revised Laws [and relating to service on such foreign corporations], are hereby repealed.

The provisions for the erection of telegraph wires, are expressly extended to telephone companies, by an act approved November 26, 1884 (Laws, p. 50)—

SEC. 1. The provisions of sections 3633 to 3643, inclusive, of the Revised Laws [*infra*], relating to telegraph wires and telegraph companies, shall extend to telephone wires and telephone companies.

SEC. 2. This act shall take effect from its passage.

The sections thus extended, form part of chapter 163, Title 27, Revised Laws of 1880, pages 700-1, and provide—

SEC. 3633. Persons associated together to erect a line of telegraph wires in this State, may set, erect, and maintain the posts and other necessary fixtures therefor, in and along any highway; but the same shall be done so as not to interfere with the public convenience in travelling on such highway, or repairing the same.

SEC. 3634. If it is found inconvenient, or inexpedient, to erect such telegraph wires agreeably to the preceding section, the Selectmen in the town where such difficulty arises, shall determine, upon application, where, and in what manner, such wires shall be erected, giving notice to the parties in interest, or their agents, and shall certify their decision, and cause the same to be recorded in the town clerk's office.

SEC. 3635. If it is found desirable to erect such line of telegraph, in and along the streets of a village, or in front of and near residences of any persons, and such persons object thereto, they may apply to the Selectmen of such town, or officers of such village, who shall determine through what streets the same shall pass, or in what manner, if at all, such objections may be obviated; and such decision shall be final, notice being given as required in the preceding section.

SEC. 3636. When such Selectmen, or other officers, are called upon to act, they shall be paid one dollar each a day; and the decision of a majority of them shall be final; and the expenses incurred thereby shall be paid by the persons erecting such telegraph line.

SEC. 3637. When, in the erection of a telegraph line, the owner, or occupant, of lands or tenements sustains, or is likely to sustain, damage thereby, the Selectmen of the town shall appraise such damage, and the same shall be paid before the line is erected; and the decision of such Selectmen shall be final, notice being given as before required in this chapter.

SEC. 3638. A telegraph company incorporated in this State, may erect and maintain its line along the sides of railroad tracks within the limits of lands owned, or held by a railroad corporation, on paying to such corporation reasonable compensation for the same; and if they cannot agree upon such compensation, it shall be determined by commissioners who reside in the vicinity of the railroad, who shall be appointed and ascertain such compensation, agreeably to the provisions of law in case of land taken for railroads.

SEC. 3639. Such telegraph line shall remain the property of such telegraph company, and shall not pass by sale, transfer, or mortgage, made by such railroad corporation, of the lands upon which the line is erected; nor shall the line be liable to attachment, or levy of execution, against such railroad corporation.

SEC. 3640. No enjoyment, for any length of time, of the privilege of maintaining telegraph posts, wires or apparatus, upon or over the buildings, or lands, of other persons, shall give a right to the continued enjoyment of such easement, or raise a presumption of a grant thereof.

SEC. 3641. If a person wilfully, or intentionally injures a telegraph wire, post, or

other fixture, erected, or maintained, in pursuance of this chapter, or wilfully interferes with the working of such telegraph line, or aids, or assists in such offense, he shall forfeit one hundred dollars, to be recovered by an action of debt, founded on this section, in the name of the owner of such telegraph line, for his use; and he may also be fined and imprisoned, as provided in other cases of malicious acts.

SEC. 3642. Towns may construct, for their own use; telegraph lines, upon and along the highways and public roads, within their limits, subject to the provisions of this chapter, so far as the same are applicable.

SEC. 3643. Selectmen may authorize persons, upon such terms as they prescribe, and subject to the provisions of this chapter, as far as applicable, to construct for private use, a telegraph line along the highways of the town.

Vermont had previously given to its incorporated villages and cities, police power over telephone poles, by an act approved November 29, 1882 (Laws, pages 75-6), providing—

SEC. 1. All telegraph, or telephone companies, or associations, and all persons owning, or managing, a telegraph, or telephone, line, shall cause the telegraph, or telephone, poles, run, or hereafter, erected on any highway within the limits of any incorporated village, or city, to be suitably painted, to the satisfaction of the trustees of such village, or aldermen of such city, and shall substitute straight poles in place of all crooked poles now, or hereafter, erected.

SEC. 2. Any telegraph, or telephone company, or association, or person owning, or managing a telegraph, or telephone line, which shall, after twenty days' notice in writing, given by any trustee, or alderman, neglect, or refuse to paint such telegraph, or telephone poles, or substitute straight poles in place of crooked poles, as provided in section one of this act, shall forfeit the sum of one hundred dollars to such village, or city, to be recovered in an action of debt on this statute; and said trustees, or aldermen, in such case, may also cause such poles to be painted, and may substitute straight poles for crooked poles, as provided in section one of this act; and may also recover the expense of so doing, in an action brought in the name of such village, or city, against the owners of such telegraph, or telephone line.

SEC. 3. Whoever shall post, or paint, any sign, advertisement, or notice, on any telegraph, or telephone pole, shall forfeit five dollars to the village, or city, in which such pole is situated.

SEC. 4. Justices of the peace shall have jurisdiction of all offences under this act.

The compensation to be paid for the use of telegraph poles, was fixed by an act approved November 29, 1882 (Laws, pages 74-5), providing—

SEC. 1. Persons desiring to attach a telephone line to the poles maintained by a telegraph company, may apply by petition in writing, to the county court of the county in which, or partly in which, the line of poles, to which it is desired to attach such wires, is situated, stating that they wish to attach a line of wires to such poles. The court so petitioned to, shall appoint three disinterested persons, as commissioners, who shall make examination, and determine whether such line can

be so attached, without injury to the company owning the poles, and if they are of the opinion that they can be so attached, shall so report to the court, and shall also report what, in their opinion, would be a fair annual compensation to be paid by the persons desiring to attach such telephone lines, for the use of such poles. The court may establish such report, or they may reject the same, and appoint new commissioners, to re-examine and report. If a report is finally established, recommending that the telegraph company allow the use of its poles, for a compensation specified in such report, such company shall so allow the use of their poles, on tender of such compensation, and if they hinder, or obstruct persons, so authorized to attach their lines thereto, may be proceeded against by the court establishing the report, as for contempt.

SEC. 2. The petition, with a citation for that purpose, shall be served on such telegraph company, at least twenty days before the sitting of the court to which such petition is preferred.

SEC. 3. Such telephone wires, when affixed to the poles of a telegraph company, under the provisions of the preceding section, shall be put up in such a manner as not to interfere with wires already affixed to such poles.

SEC. 4. This act shall take effect from its passage.

Virginia permits the construction of telephone lines for public use, along roads, railroads, and canals, by the owners thereof (Code of 1887, Title 18, "Chartered Companies, Common Carriers and Railroad Commissioner," chap. 51, "Of Works of Internal Improvement," pp. 330, 342)—

SEC. 1185. Every company which is governed by the act passed on the seventh day of February, eighteen hundred and seventeen, prescribing certain general regulations for the incorporation of turnpike companies, or by the act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and every company which, since the first day of July, eighteen hundred and fifty, has been, or which hereafter shall be, incorporated to construct any work of internal improvement, shall be governed by the provisions contained in the forty-seventh chapter [of this Title, "Of Joint Stock Companies Generally; and of Companies Chartered by Courts,] and in this Chapter, so far as they can apply to such company, without violating its charter.

SEC. 1231. Any company may construct and maintain along the line of its improvement, an electric telegraph, or telephone, for its own use and that of the public, and make reasonable charges on messages and intelligence conveyed thereby.

And further provides in chapter fifty-four ("Of Telegraph and Telephone Companies") of the same Title of the Code (page 354-6)—

SEC. 1287. Every telegraph and every telephone company, incorporated by this or any other State, or by the United States, may construct, maintain, and operate its line along any of the State or county roads, or works, and over the waters of

the State, and along and parallel to any of the railroads of the State, provided the ordinary use of such roads, works, railroads, and waters, be not thereby obstructed; and along, or over, the streets of any city, or town, with the consent of the council thereof.

SEC. 1288. Such company may contract with any person or corporation, the owner of lands, or of any interest, franchise, privilege, or easement therein, or in respect thereto, over which such line is proposed to be constructed, for the right of way, for erecting, repairing, and preserving its poles and other structures, necessary for operating its line, and the right of way, for the erection and occupation of offices, at suitable distances along its line, for public accommodation.

SEC. 1289. If the company and such owner cannot agree on the terms of such contract, the company shall be entitled to such right of way, upon making just compensation therefor to such owner. Such compensation shall be ascertained and made, as provided in chapter forty-six, for the acquisition of lands by a company incorporated for a work of internal improvement, when such internal improvement company cannot agree on the terms of the purchase with those entitled to the lands wanted for the purpose of the company. The title which may be acquired by a telegraph or telephone company, under this section, shall be only to a right of way for the purposes stated in the preceding section; and no right of way acquired by any such company, under this, or the preceding section, shall be to the exclusion of other like companies from having, or acquiring, a like right of way over the same lands.

SEC. 1290. The three preceding sections shall be subject to repeal, alteration, or modification, and the rights and privileges acquired thereunder shall be subject to revocation or modification, by the General Assembly, at its pleasure.

SEC. 1291. It shall be the duty of every telegraph or telephone company, doing business in this State, to receive dispatches from and for other telegraph or telephone companies or lines, and from and for any person; and, upon the payment of the usual charges therefor, according to the regulations of the company, to transmit the same, faithfully and impartially, and as promptly as practicable, and in the order of delivery to the said company. For every failure to transmit a dispatch, faithfully and impartially, and for every failure to transmit a dispatch as promptly as practicable, or in the order of its delivery to the company, the company shall forfeit the sum of one hundred dollars to the person sending, or wishing to send, such dispatch. But nothing herein shall prevent any such company from giving preference to dispatches on official business, from or to officers of the United States, or the State of Virginia, or from making arrangements with proprietors or publishers of newspapers, for the transmission to them, for publication, of intelligence of general and public interest, out of its regular order.

SEC. 1292. It shall be the duty of every telegraph or telephone company, upon the arrival of a dispatch at the point to which it is to be transmitted by said company, to deliver it promptly to the person to whom it is addressed, when the regulations of the company require such delivery, or to forward it promptly, as directed, when the same is to be forwarded. For every failure to deliver, or forward, a dispatch as promptly as practicable, the company shall forfeit one hundred dollars to the person sending the dispatch, or to the person to whom it was addressed.

SEC. 1293. Every person, firm, association, or company, doing the business of telegraphing or telephoning for the public, in this State, whether incorporated or not, shall be subject to the provisions of the two preceding sections.

SEC. 1294. The proprietors of each line of telegraph or telephone doing business in this State, shall, annually, on or before the first of October, make a report to the Board of Public Works for the year ending the next preceding thirtieth day of September, showing, in such a way as the Board may prescribe, the amount of capital invested within this State in their line, how much thereof was received by the patentees or inventors, and how much is held by others, the amount per share of stock, the expense of construction and maintaining the line, the gross and net profits of such line, and the regulations adopted to ensure the faithful discharge of the duties of the said proprietors. If they fail to make such report, they shall forfeit five hundred dollars; and the like forfeiture shall be incurred for each succeeding month that such failure shall continue.

Wisconsin punishes injury to telephone lines, by chapter 447, approved April 11, 1885, and published April 16, 1885, Laws, page 450—

SEC. 1. Section 4559 of the Revised Statutes is hereby amended, to read as follows:

SEC. 4559. Any person having the right so to do, who shall remove, or change, any building, or other structure, or any timber, standing or fallen, to which any telegraph or telephone lines, or wires, are in any manner attached, or cause the same to be done, which shall destroy, disturb or injure the wires, poles, or other property of any telegraph or telephone company transacting business in this State, without first giving to such company, at its office nearest to such place of injury, at least twenty-four hours' previous notice thereof, shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding fifty dollars.

And any person who shall break down, interrupt, or remove any telegraph or telephone line, or wire, or destroy, disturb, interfere with, or injure the wires, poles, or other property of any telegraph or telephone company in this State, shall be punished by imprisonment in the county jail, not more than three months, or by fine not exceeding one hundred dollars.

SEC. 2. This act shall take effect and be in force from and after its passage and publication.

The license fee is fixed by Chapter 345, approved April 4, 1883, and published April 13, 1883, Laws, pages 304-6—

SEC. 1. Every person, company, association or corporation, engaged in this State, in the business of transmitting messages by telephone, or of renting, letting, or keeping telephone instruments, wires and batteries, or either, for hire, shall, on or before the tenth day of February in each year, make and return to the State Treasurer, in such form and upon such blanks as shall be furnished by him, a true statement of the gross receipts of such person, company, association, or corporation, during each year; which statement shall be verified by the president, secretary and treasurer of such company, association, or corporation, or of the person so letting, renting, or keeping telephones, wires, and batteries, or either, for hire; otherwise by the oath of the principal officers of such company, association, or corporation. The statement herein required for the year 1883, may be returned on or before the first day of June, 1883.

SEC. 2. Every such person, company, association, or corporation shall, upon returning such statement, apply for a license to carry on such telephone business within the State, and shall pay the license fee therefor, provided in the next section, and thereupon shall receive from the State Treasurer a license to carry on such business for the calendar year, commencing on the first day of January preceding, and ending on the succeeding thirty-first day of December, unless sooner revoked.

SEC. 3. [As amended by chapter 333, approved April 7, 1885, Laws, page 313.] The annual license fee provided for in the preceding section shall be one and one-half per centum of the gross receipts of the business within the State.

SEC. 4. If any such person, company, association, or corporation, engaged in the telephone business in this State, shall neglect to obtain such license, or pay such license fee, or any part thereof, as hereinbefore provided, such person, company, association, or corporation, shall absolutely forfeit to the State the sum of five thousand dollars (\$5000), to be recovered in an action brought in the name of the State, and such neglect, in the case of associations or corporations, shall also be a cause of forfeiture of all the rights, privileges and franchises, under which such business is carried on, whether granted by special charter, or obtained under laws, or existing by comity in corporations. And the Attorney-General shall, upon such neglect, collect by action the pecuniary forfeiture herein imposed, and also proceed to have such rights, privileges, and franchises, duly declared forfeited.

Any association, or corporation, at any time before final judgment of forfeiture of such rights, privileges, and franchises, is rendered, may be permitted to make the return and pay the license fee herein provided for, upon special application to the court in which the action to declare such forfeiture is pending, upon such terms as the court shall direct.

SEC. 5. The payment of the license fee hereinbefore provided for, shall be in lieu of all taxes for any purposes, authorized by the laws of the State, except taxes upon such real estate as may be owned by such person, company, association, or corporation, which is in nowise connected with, or in anywise used in the prosecution of such telephone business.

SEC. 6. The license herein provided for shall certify to the fact of the payment of the license fee, be attested by the greater, or lesser, seal, thereto affixed, and shall be in such form as shall be approved by the Attorney-General.

SEC. 7. This act shall take effect and be in force from and after its passage and publication.

Wisconsin has also regulated the rental charged, by Chapter 196, approved March 23, 1882, and published March 28, 1882, Laws, 647—

SEC. 1. It shall be the duty of every telephone company, or person, firm, or corporation, engaged in the business of leasing telephones to the public, or supplying the public with telephones and telephonic service, or operating a telephone exchange to receive and transmit, without discrimination, messages from and for any other company, person, or persons, upon tender, or payment, of the usual or customary charges therefor; and, upon payment, or tender, of the usual or customary charges therefor, or usual or customary rental sum, it shall be the duty of every telephone company, or person, firm, or corporation, engaged in the business of leasing telephones to the public, or supplying the public with telephones and telephonic service,

or operating a telephone exchange, to furnish, without unreasonable delay, without discrimination, and without any further or additional charge to the person, firm, or corporation applying for the same, including all telegraph companies, a telephone, or telephones, with all the proper or necessary fixtures, as well as connection with the central office or telephone exchange, if desired, and shall connect the telephone of such person, firm, or corporation, with the telephone of any other person, firm, or corporation, having a connection with the same, or a connecting exchange, or central office, whenever requested so to do, without regard to the character of the messages to be transmitted, provided they are not obscure [sic] or profane; and every person, or corporation, neglecting, or refusing, to comply with any of the provisions of this act, shall forfeit not less than twenty-five, nor more than one hundred dollars for each and every day such neglect, or refusal, shall continue, one half to the use of the person, or corporation, prosecuting therefor.

SEC. 2. This act shall take effect and be in force, from and after its passage and publication.

JOHN B. UHLE.

RECENT AMERICAN DECISIONS.

Supreme Court of California.

SESLER v. MONTGOMERY.

1. A husband may address words to his wife, in private, which would be slanderous of another person, if spoken in the presence of a third person.

2. An eavesdropper, listening to the conversation of the defendant and his wife, is not such a third person.

3. The common law rule, that the civil existence of the wife is merged in that of her husband, still obtains, save where an exception has been legally established.

Action for slander. Verdict and judgment for plaintiff. Defendant appeals from the judgment and from an order denying a new trial.

In bank: on rehearing. The former opinion is on page 271, *ante*.

Estee, Wilson & McCutchen, J. C. Martin and W. F. Goad, for appellant.

W. W. Allen, A. R. Cotton and W. H. H. Hart, for respondent.

McFARLAND, J. (March 23, 1889). The evidence shows that the alleged slanderous words were spoken (if at all) in the house of the defendant in a conversation addressed exclusively